

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION

UNITED STATES OF AMERICA,

CR 13-69-BMM

Plaintiff,

vs.

JAMES MICHAEL YOUPEE,

Defendant.

**FINDINGS AND
RECOMMENDATIONS TO
REVOKE DEFENDANT'S
SUPERVISED RELEASE**

I. Synopsis

The United States accused Mr. Youpee of violating his conditions of supervised release by (1) committing other crimes, (2) failing to report for substance abuse testing, (3) consuming alcohol, and (4) failing to report an arrest to his probation officer. Mr. Youpee admitted to the allegations. His supervised release should be revoked. He should be sentenced to four months in custody, with thirty-two months of supervised release to follow.

II. Status

United States District Judge Brian Morris sentenced Mr. Youpee to forty-two months in custody, with thirty-six months of supervised release to follow, on January 23, 2014, after a he pleaded guilty to Assault Resulting in Serious Bodily

Injury. (Doc. 32.) He began his current term of supervised release on April 21, 2016.

The United States Probation Office filed a Report on Offender Under Supervision on November 7, 2016, informing the Court that Mr. Youpee had been arrested for DUI, admitted to consuming alcohol, and failed to report for substance abuse testing. (Doc. 38.) The Court allowed him to continue his supervised release.

Petition

The Probation Office filed a Petition for Warrant for Offender Under Supervision on January 31, 2017, alleging that Youpee violated the terms of his supervised release by (1) committing other crimes, (2) failing to report for substance abuse testing, (3) consuming alcohol, and (4) failing to report an arrest to his probation officer. (Doc. 39.) Judge Morris issued a warrant for his arrest based on the allegations in the Petition. (Doc. 40.)

Initial appearance

Mr. Youpee appeared before the undersigned on February 16, 2017, in Great Falls, Montana. Federal Defender Evangelo Arvanetes accompanied him. Assistant United States Attorney Jeffery Starnes represented the United States.

Mr. Youpee said he had read the petition and understood the allegations. He waived the preliminary hearing, and the parties consented to proceed immediately

with the revocation hearing before the undersigned.

Revocation hearing

Mr. Youpee admitted to the allegations. The violations are serious and warrant revocation of his supervised release.

Mr. Youpee's violation grade is Grade C, his criminal history category is I, and his underlying offense is a Class C felony. He could be incarcerated for up to twenty-four months and could be ordered to remain on supervised release for thirty-six months, less any custody time imposed. The United States Sentencing Guidelines call for three to nine months in custody.

Mr. Arvanetes recommended a sentence of three to four months, with supervised release to follow. Mr. Youpee exercised his right of allocution and admitted that he is an alcoholic. Mr. Starnes recommended a sentence of three to four months, with supervised release to follow.

III. Analysis

Mr. Youpee's supervised release should be revoked because he admitted violating its conditions. He should be sentenced to four months in custody, with thirty-two months of supervised release to follow. This sentence would be sufficient given the seriousness of the violations but not greater than necessary.

IV. Conclusion

Mr. Youpee was advised that the above sentence would be recommended to Judge Morris. The Court reminded him of his right to object to these Findings and Recommendations within 14 days of their issuance. The undersigned explained that Judge Morris would consider his objection, if it is filed within the allotted time, before making a final determination on whether to revoke his supervised release and what, if any, sanction to impose.

The undersigned **FINDS:**

James Michael Youpee violated the conditions of his supervised release by (1) committing other crimes, (2) failing to report for substance abuse testing, (3) consuming alcohol, and (4) failing to report an arrest to his probation officer. .

The undersigned **RECOMMENDS:**

The District Court should enter the attached Judgment, revoking Mr. Youpee's supervised release and committing him to the custody of the United States Bureau of Prisons for four months, with no supervised release to follow.

**NOTICE OF RIGHT TO OBJECT TO FINDINGS AND
RECOMMENDATIONS AND CONSEQUENCES OF FAILURE TO
OBJECT**

The parties may serve and file written objections to the Findings and Recommendations within 14 days of their entry, as indicated on the Notice of Electronic Filing. 28 U.S.C. § 636(b)(1). A district judge will make a de novo

determination regarding any portion of the Findings and Recommendations to which objection is made. The district judge may accept, reject, or modify, in whole or in part, the Findings and Recommendations. Failure to timely file written objections may bar a de novo determination by the district judge, and may waive the right to appear and allocute before a district judge.

Dated the 22nd day of February 2017.



John Johnston
United States Magistrate Judge